

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANTE BIANCO,

Defendant-Appellant.

UNPUBLISHED

March 1, 2007

No. 267729

Wayne Circuit Court

LC No. 05-008973-01

Before: Hoekstra, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of assault with intent to do great bodily harm less than murder, MCL 750.84, and was sentenced to three years' probation. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that he did not properly waive his right to a jury trial because there was no on-the-record waiver in open court, contrary to MCR 6.402(B). We disagree. The record of the proceedings on November 29, 2005, clearly shows that the trial court complied with MCR 6.402(B) and accepted defendant's waiver only after ascertaining that defendant understood his right to a jury trial and voluntarily chose to be tried by the court.

Defendant next argues that the victim's statement to a police officer, identifying defendant as her assailant, was testimonial and therefore violated *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004).¹ We disagree.

In *Crawford*, the Supreme Court observed that while not all hearsay evidence is subject to the Confrontation Clause, the Sixth Amendment bars the admission of statements that are testimonial, unless the witness is unavailable and the defendant had a prior opportunity for cross-examination. *Id.* at 51, 68. More recently, in *Davis v Washington*, ___ US ___, 126 S Ct 2266, 2273-2274; 165 L Ed 2d 224 (2006), the Supreme Court explained the difference between testimonial and nontestimonial statements under *Crawford*:

¹ Defendant does not challenge the trial court's determination that the statement qualified as an excited utterance under MRE 803(2).

Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution. [Footnote omitted.]

See also *People v Alvin C Walker, Jr.*, ___ Mich App ___, ___ NW2d ___ (Docket No. 250006, issued November 21, 2006), slip op at 2-3.

In this case, the victim's statement was made just after the responding officer arrived at the scene and there was still an ongoing emergency situation. Under the circumstances, the statement was nontestimonial in nature and, therefore, was admissible without violating defendant's right of confrontation. The trial court properly ruled that the statement was admissible under *Crawford*.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jane E. Markey
/s/ Kurtis T. Wilder